



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

BALLOT VOTE SHEET

Date: July 11, 2012

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Kenneth R. Hinson, Executive Director
Cheryl A. Falvey, General Counsel

FROM : Patricia M. Pollitzer, Acting Assistant General Counsel, RAD

SUBJECT : ASTM's Revisions to Safety Standards for Durable Infant or Toddler Products:
Infant Bath Seats, Full-Size Cribs, and Toddler Beds

BALLOT VOTE DATE: July 17, 2012

Staff is forwarding to the Commission memoranda from CPSC staff concerning ASTM's revisions to its standards for infant bath seats, full-size cribs, and toddler beds. The Commission previously issued consumer product safety standards for these products under section 104(b) of the Consumer Product Safety Improvement Act (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act. The CPSC standards incorporated by reference relevant ASTM standards for those products.

Public Law 112-28 specifies a procedure to update such CPSC standards when ASTM revises a voluntary standard that was the basis for the CPSC mandatory standard. That provision states:

If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

P.L. 112-28, section 3.

In accordance with that procedure, CPSC staff reviewed the revised ASTM standards and recommends that the Commission determine that the revision to the toddler bed standard does not improve the safety of toddler beds and that the Commission retain the existing consumer product safety standard for toddler beds. However, because the revised ASTM infant bath seat standard and full-size crib standard are essentially identical to CPSC's current mandatory standards, staff recommends allowing those revised voluntary standards to take effect as contemplated by the statutory notice provision.

Thus, CPSC staff recommends that the Commission publish a direct final rule revising the references in CPSC's safety standards for bath seats and full-size cribs to refer to the revised ASTM standards for those products. A draft *Federal Register* notice for that purpose is attached. CPSC staff also recommends that the Commission direct staff to notify ASTM that the Commission determines that ASTM's toddler bed standard revision does not improve the safety of toddler beds and the Commission will retain the existing consumer product safety standard for toddler beds.

Please indicate your vote on the following options:

A. The Draft *Federal Register* Notice

- I. Approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats and full-size cribs.

Signature

Date

- II. Approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats and full-size cribs, with changes (please specify changes):

Signature

Date

- III. Do not approve publication in the *Federal Register* of the draft direct final rule revising the references in the CPSC's standards for infant bath seats and full-size cribs.

Signature

Date

- IV. Take other action (please specify):

Signature

Date

B. Determination Concerning ASTM's Toddler Bed Standard Revision

- I. Determine that ASTM F1821-11a does not improve the safety of toddler beds and direct CPSC staff to notify ASTM: (1) of this determination and (2) that the Commission is retaining the existing consumer product safety standard for toddler beds at 16 C.F.R. part 1217.

Signature

Date

- II. Do not determine that ASTM F1821-11a does not improve the safety of toddler beds and instead make the following changes in the draft *Federal Register* notice to revise the reference in CPSC's standard for toddler beds (please specify changes):

Signature

Date

III. Take other action (please specify):

Signature

Date

Attachment: Draft *Federal Register* notice titled “Revisions to Safety Standards for Durable Infant or Toddler Products: Infant Bath Seats and Full-Size Cribs”

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[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1215 and 1219

Revisions to Safety Standards for Durable Infant or Toddler Products: Infant Bath Seats and Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (Commission, CPSC, or we) has published consumer product safety standards for numerous durable infant or toddler products, including infant bath seats and full-size cribs. These standards incorporated by reference the ASTM voluntary standards associated with those products, with some modifications. In August 2011, Congress enacted P.L. 112-28, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standards for infant bath seats and full-size cribs to incorporate by reference more recent versions of the applicable ASTM standards.

Because the changes to the ASTM standards make them essentially identical to the standards that the CPSC has issued previously, no changes to the products are required.

We also received notification from ASTM of an updated ASTM standard for toddler beds. However, the Commission is not accepting the revised ASTM standard for toddler

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beds, and therefore, the CPSC standard for toddler beds will remain as it currently is stated at 16 CFR part 1217.

DATES: The rule is effective on November 12, 2012, unless we receive significant adverse comment by [insert date 30 days after publication in the **FEDERAL REGISTER**]. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of November 12, 2012. The compliance dates for the full-size crib standard remain as stated in 16 CFR 1219.1(b).

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2012-_____, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including

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any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the full-size crib standard, contact Troy Whitfield, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814-4408; telephone (301) 504-7548; twhitfield@cpsc.gov. For information related to the infant bath seat standard, contact Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814-4408; telephone (301) 504-7607; cmanley@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. Law 110-314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Under the statute, the term “durable infant or toddler product” explicitly includes infant bath seats, full-size cribs, and toddler beds. In accordance with section 104(b), the

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Commission has published safety standards for these products that incorporate by reference the relevant ASTM standards with certain modifications that make the voluntary standard more stringent.

P.L. 112-28. On August 12, 2011, Congress enacted P.L. 112-28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable and infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. This provision states:

If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

P.L. 112-28, section 3.

Notification and Review of Revisions. On May 16, 2012, ASTM notified us of ASTM's approval and publication of revisions to ASTM F1169, Standard Consumer Safety Specification for Full-Size Baby Cribs; ASTM F1967, Standard Consumer Safety Specification for Infant Bath Seats; and ASTM F1821, Standard Consumer Safety Specification for Toddler Beds. In its notification, ASTM stated that revisions to these standards have occurred since the enactment of P.L. 112-28.

The Commission has reviewed the revisions. ASTM's revision to its toddler bed standard, ASTM F1821-11b, does not include several of the modifications that the

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Commission made in its mandatory standard at 16 CFR part 1217. Therefore, we have determined that ASTM F1821-11b does not improve the safety of toddler beds, and we are notifying ASTM that the Commission will retain the CPSC toddler bed standard at 16 CFR part 1217 as it is.

As explained below, ASTM's revisions to its standards for infant bath seats and full-size cribs make these revised ASTM standards essentially identical to the CPSC mandated standards for these products. In accordance with P.L. 112-28, unless the Commission determines that these revisions do not improve the safety of these consumer products, the revised ASTM standards for infant bath seats and full-size cribs will become the new CPSC mandatory standard for those products. We are publishing this direct final rule revising the incorporation by reference that is stated in each of these rules so that they will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Bath Seats

On June 4, 2010, the Commission published a final rule issuing a safety standard for infant bath seats that incorporated by reference ASTM F1967-08a, Standard Consumer Specification for Infant Bath Seats, with certain modifications to make the standard more stringent. 75 FR 31691.

ASTM notified us that the current version of the ASTM standard for infant bath seats is ASTM F1967-11a, which was approved and published in September 2011. Two previous revisions, ASTM F1967-10 and ASTM F1967-11, made minor changes to the ASTM standard. ASTM F1967-11a includes all the modifications that CPSC made when it issued its mandatory standard. Thus, the revised ASTM standard, ASTM F1967-11a, is

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essentially identical to CPSC's mandatory standard for infant bath seats at 16 CFR part 1215. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the determination that "the proposed revision does not improve the safety" of infant bath seats, under P.L. 112-28. Therefore, in accordance with P.L. 112-28, the revised ASTM standard for infant bath seats becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1215, to reference the revised ASTM standard.

2. Full-Size Cribs

On December 28, 2010, the Commission published a final rule issuing a standard for full-size cribs that incorporated by reference ASTM F1969-10, with two modifications to make the standard more stringent. 75 FR 81766.

ASTM notified us that the current version of the ASTM standard for full-size cribs is ASTM F1169-11, which was approved and published in September 2011. A previous revision, ASTM F1169-10a, made one change that clarified testing of cribs with folding or moveable sides. This change was identical to one of the modifications that the Commission made in its mandatory standard. ASTM F1169-11 has two additional revisions. One is editorial and corrects a typographical error. The other change tracks a modification that the Commission made in its mandatory standard: it removes a provision that required retightening of hardware between tests. With these changes, ASTM F1169-11 is now essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the

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determination that “the proposed revision does not improve the safety” of full-size cribs. Therefore, in accordance with P.L. 112-28, the revised ASTM standard for full-size cribs becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1219 to reference the revised ASTM standard.

The 2010 crib rule fulfilled the direction in the Danny Keysar Child Product Safety Notification Act to issue standards for durable infant or toddler products, and it also implemented direction specific to cribs in section 104(c) of the CPSIA. In accordance with section 104(c) of the CPSIA, the CPSC’s crib standards (covering both full-size and non-full-size cribs) apply to persons and entities not required to comply with other CPSC standards, such as child care facilities, family child care homes, and places of public accommodation. 75 FR 81786-87. The crib rule became effective on June 28, 2011. It provided for two compliance dates. The first date, June 28, 2011, applies to all entities subject to the crib rule, except for child care facilities, family child care homes, and places of public accommodation. The second date, December 28, 2012, applies to child care facilities, family child care homes, and places of public accommodation. 75 FR at 81781. In June 2011, the Commission gave additional time to companies that provide short-term crib rentals; accordingly, they have until December 28, 2012, to meet the crib standards.

P.L. 112-28 contains a provision limiting the application of revisions when ASTM revises its crib standards. That language states that such revisions:

shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary to protect against an unreasonable risk to health or safety. If the Commission

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determines that application to a person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary, it shall provide not less than 12 months for such person to come into compliance.

P.L. 112-28, section 3(b). According to this provision, changes to CPSC's crib standards would apply only to crib manufacturers and importers, not to the other entities mentioned in section 104(c)(2) who are not usually subject to CPSC's standards, such as child care facilities, family child care homes, and places of public accommodation.

ASTM's revision to its full-size crib standard included the modifications that the Commission made when it issued the CPSC's mandatory standard for full-size cribs. Thus, there is no substantive difference between ASTM's revised standard, ASTM F1169-11, and the currently mandated standard that the Commission published in December 2010. Therefore, the CPSC's action in this direct final rule, which revises the incorporation by reference in 16 CFR part 1219, does not require any change by the persons and entities subject to the CPSC's full-size crib standard. Those who manufacture, import, or sell full-size cribs continue to be required to meet the same full-size crib requirements as they have been required to meet since June 28, 2011. Child care facilities, family child care homes, places of public accommodation, and businesses that rent cribs for short terms will be required to meet the same requirements for full-size cribs beginning on December 28, 2012. Because the revision contemplated by this direct final rule does not require any change by the persons subject to the mandatory standard published in 2010, the provision set forth in P.L. 112-28 limiting the application of revisions is without effect in this instance.

C. Direct Final Rule Process

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The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” We believe that in the circumstances of these revisions to ASTM standards upon which CPSC’s durable infant or toddler product standards are based, notice and comment is not necessary. P.L. 112-128 provides for nearly automatic updating of durable infant or toddler product standards that the Commission issues under the Danny Keysar Child Product Safety Notification Act, if ASTM revises the underlying voluntary standard and the Commission does not determine that the revision “does not improve the safety of the consumer product covered by the standard.” Nevertheless, without Commission action to update the incorporation by reference in its mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard. Thus, the Commission believes that it is appropriate to issue a rule revising the incorporation by reference in these circumstances. However, little would be gained by allowing for public comment because P.L. 112-28 requires that the CPSC’s mandatory standard must change to the revised voluntary standard (unless the Commission has made the requisite finding concerning safety). The revisions to the infant bath seat standard and full-size crib standard merely reflect the modifications that the Commission made previously when it mandated these standards. It is possible, that in the future, revisions to other voluntary standards that were the basis for Commission standards under section 104(b) of the CPSIA could include substantive changes that do more than reflect the Commission’s changes. Therefore, we believe that it is appropriate

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to set in place a procedure that allows the Commission to receive significant adverse comments but at the same time accommodates the nearly automatic update procedure set forth in the statute.

In its Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommends using direct final rulemaking when an agency employs the “unnecessary” prong of the good cause exemption to notice and comment rulemaking.

Thus, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012. In accordance with ACUS’s recommendation, we consider a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule’s underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a significant adverse comment, it would withdraw this rule. The Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

D. Effective Date

Under the procedure set forth in P.L. 112-28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision

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becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant bath seat and full-size crib standards will not result in any substantive changes to the standards. Therefore, this rule will not have any economic impact on small entities.

F. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

G. Paperwork Reduction Act

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Both the infant bath seat standard and the full-size crib standard contain information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to those sections of the standards. Thus, these revisions will not have any effect on the information collection requirements related to those standards.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as “consumer product safety standards,” thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

I. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be

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based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bath seats and full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. (They also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.)

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published notices of requirements for accreditation of third party conformity assessment bodies for testing infant bath seats (75 FR 31688 (June 4, 2010)) and full-size cribs (75 FR 81789 (December 28, 2010)). The notices of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215 (which incorporated ASTM F1967-08a with modifications) and for testing full-size cribs to 16 CFR part 1219 (which incorporated ASTM F1969-10 with modifications). This rule revises the references to the standards that are incorporated by reference in the CPSC's infant bath

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seat and full-size crib standards. As discussed previously, the revised ASTM standards for these products make them substantively identical to the infant bath seat and full-size crib standards that the Commission mandated. Thus, revising the references will not necessitate any change in the way that third party conformity assessment bodies are testing these products for compliance to CPSC standards. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to these standards also to cover testing to the revised standards.

List of Subjects

16 CFR Part 1215 and Part 1219

Consumer protection, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends Title 16 CFR chapter II as follows:

1. Revise part 1215 to read as follows:

PART 1215 – SAFETY STANDARD FOR INFANT BATH SEATS

Authority: Sections 3 and 104 of Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

* * * * *

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967-11a, Standard Consumer Safety Specification for Infant Bath Seats, approved

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September 1, 2011. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, phone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

2. Revise part 1219 to read as follows:

PART 1219 – SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. Law 110-314, § 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

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§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169-11, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved August 15, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box 0700, West Conshohocken,

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PA 19428; telephone 610-832-9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Dated: _____

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

July 11, 2012

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM: DeWane Ray, Assistant Executive Director
Office of Hazard Identification and Reduction

Patricia Edwards, Project Manager
Directorate for Engineering Sciences

SUBJECT: Notice of Revision to the Full-Size Baby Crib Standard 16 CFR Part
1219

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act P.L. 110-314 Sec. 104(b) (4)(B), “ as revised by P.L. 112-28 (H.R. 2715) Sec. 3, instructs the voluntary standards organization, ASTM, to notify the U.S. Consumer Product Safety Commission of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.”

ASTM F1169-10, *Standard Consumer Safety Specification for Full-Size Baby Cribs*, along with two modifications made by the Commission, was adopted as a mandatory consumer product safety standard in 16 CFR part 1219 (75 Fed. Reg. 81766, December 28, 2010). ASTM officially notified the CPSC on May 16, 2012, that they have published a revised 2011 version of ASTM F1169.

This memorandum outlines the differences between 16 CFR part 1219 and ASTM F1169-11, determines whether any differences would affect how a third party assessment body would test a full-size crib, and makes the recommendation to publish a rule in the *Federal Register* revising 16 CFR part 1219 to refer to ASTM F1169-11.

II. REVIEW AND COMPARISON OF STANDARDS

There have been two significant revisions to ASTM F1169 since the publication of ASTM F1169-10. The changes for each revision are discussed below:

ASTM F1169-10a Revision

ASTM F1169-10a, published in December 2010, is the version of the ASTM full-size crib standard that followed F1169-10, and it contains only one significant change from ASTM F1169-10. The change was to add a test clarification to the spindle/slat static load test, which pertains to cribs that incorporate folding or moveable sides. This change is identical to one of the two modifications made by the Commission incorporated into 16 CFR part 1219.

ASTM F1169-11 Revision

ASTM F1169-11, published in September 2011, is the next version of the ASTM full-size crib standard following F1169-10a, and it contains two revisions, one editorial, and one significant. The editorial change corrected a typographical error. The significant revision pertains to the removal of the retightening requirement found in Section 6.12. This requirement, which states: “*Screws and bolts that are normally removed or loosened to disassemble the product shall be retightened between the crib side latch testing and the mattress support vertical impact testing*” was removed, as the second of two modifications to F1169-10 made by the Commission, for the CPSC’s full-size crib final rule in 16 CFR part 1219.

Thus, with the revisions outlined above, ASTM F1169-11 is now harmonized with 16 CFR part 1219.

III. CONCLUSION AND RECOMMENDATION

Staff concludes that ASTM F1169-11, *Standard Consumer Safety Specification for Full-Size Baby Cribs* is equivalent to 16 CFR part 1219. The current 16 CFR part 1219 incorporates ASTM F1169-10, with two additional modifications:

1. Requires cribs to be tested without retightening fasteners; and
2. Clarifies how the spindle strength test applies to movable sides.

ASTM F1169-11 incorporates both of these modifications, thus, making the latest version of the standard the only document that an accepted test laboratory needs to conduct compliance testing.

Therefore, staff recommends that the Commission revise the CPSC's full-size baby crib standard, 16 CFR part 1219, to reference ASTM F1169-11 as the new CPSC safety standard. The Office of the General Counsel has drafted a final rule for publication in the *Federal Register* making this change. In accordance with P.L. 112-28, the rule would become effective 90 days after publication in the *Federal Register*, which is approximately 180 days after ASTM's notification to the Commission.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY, BETHESDA, MD 20814

Memorandum

This document has been electronically
approved and signed.

Date: July 11, 2012

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM: DeWane Ray, Assistant Executive Director
Office of Hazard Identification and Reduction

Patricia Edwards, Project Manager
Directorate for Engineering Sciences

SUBJECT: Notice of Revision to the Infant Bath Seat Standard, 16 CFR Part 1215

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act P.L. 110-314 Sec. 104(b) (4)(B), “ as revised by P.L. 112-28 (H.R. 2715) Sec. 3, instructs the voluntary standards organization, ASTM, to notify the U.S. Consumer Product Safety Commission of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission, as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.”

The ASTM F1967-08a, *Standard Consumer Safety Specification for Infant Bath Seats*, along with 10 modifications made by the Commission, was adopted as a mandatory consumer product safety standard under 16 CFR Part 1215, Safety Standard For Infant Bath Seats (75 Fed. Reg. 31691, June 4, 2010) and corrected¹ in August 2010 (75 Fed. Reg. 51177, August 19, 2010). ASTM officially notified the CPSC on May 16, 2012, indicating that a revised version of the standard was published under ASTM F1967-2011a.

This memorandum outlines the differences between 16 CFR Part 1215 and ASTM F1967-11a, determines whether any differences would affect how a third party assessment body would test a bath seat, and makes the recommendation to publish a rule in the *Federal Register* revising 16 CFR Part 1215 to refer to ASTM F1967-11a.

II. REVIEW AND COMPARISON OF STANDARDS

There have been three revisions to ASTM F1967 since the publication of ASTM F1967-08a. The changes for each revision are discussed below.

ASTM F1967-10 Revision

ASTM F1967-10, approved in March 2010, and published in April 2010, is the next version of the ASTM bath seat standard following F1967-08a, and it contains only one significant change. The change pertains to warnings and labeling requirements, and it was not included as part of the modifications to ASTM F1967-08a for 16 CFR part 1215.

That change (?) is as follows (~~strikeouts~~ indicate words removed, underline indicates words added):

“8.1.1 The safety alert symbol . . . in height. ~~Specified~~ All warning(s) on both the product and the package shall be distinctively separated from any other wording or design and shall appear in the English language . . .”

This change was proposed in response to a question from a testing laboratory that was having difficulty interpreting whether the requirement was for all of the warnings or just some, *i.e.*, those that were “specified.” Since the ASTM subcommittee had intended for the entire list of warnings to be distinctly separated from other wording or designs on the product and the package (not just some of the warnings), the above change was implemented in order to be more explicit. CPSC staff is in agreement with this change.

¹ The initial three sentences of one modification were inadvertently left out of the June 4, 2010 *Federal Register* notice.

ASTM F1967-11 Revision

ASTM F1967-11, approved in July 2011, and published in September 2011, is the next version of the ASTM bath seat voluntary standard to follow F1967-10, and it contains two significant changes (?). The changes pertain to the baby wash solution used during the stability test, and to the test platform (bath tub) specified. Neither of these two changes were included as part of the modifications to ASTM F1967-08a for 16 CFR Part 1215.

The two changes are as follows (~~strikeouts~~ indicate words removed, underline indicates words added):

1) Footnote for Table 1: Representative Baby Wash

“This baby wash (Lot #00536-133, made August 16, 2005) can be obtained from Cognis Care Chemicals, 300 Brookside Ave., Ambler, PA 19002. Alternatively, the baby wash solution may be generated following the instructions and using the ingredients in their respective percentages shown in the table.”

This change was made after test laboratories raised concerns about being able to obtain the baby wash in small quantities. Reportedly, Cognis Care Chemicals was offering the product for sale at quantities of 55-gallon drums or more. Thus, an alternative, allowing testing laboratories to make up their own baby wash, was added to the standard. Staff supports this change to help eliminate unnecessary costs associated with testing.

2) “7.4.3 The test platform (see Fig. 3) shall consist of a standard recessed ~~smooth~~ porcelain enameled metal bath tub of the following nominal dimensions . . .”

This change was made after it was discovered that the sole supplier of the test platform tub discontinued the sale of that particular tub. The manufacturer now sells the tub with a slightly textured floor surface, rather than a smooth surface. It was determined by CPSC technical staff² that using the textured floor tub rather than a smooth tub would not affect the test results. Following that determination, ASTM revised the standard to remove the word “smooth” from the specification.

² December 13, 2010, Memo from Patricia Edwards to Carolyn Manley, “Test Platform Specifications for 16 CFR 1215, Safety Standard for Infant Bath Seats.”

F1967-11a Revision

ASTM F1967-11a, approved in September 2011, and also published in September 2011, is the next version of the standard to follow F1967-11 and the one submitted to CPSC for consideration. This latest revision contains an additional 10 significant changes. These 10 changes match the 10 modifications outlined in 16 CFR Part 1215, and thus, harmonize the voluntary standard with the CPSC's bath seat safety standard. In addition to these 10 changes, the three changes outlined in the two previous versions of ASTM F1967 are also contained in this latest version, as are several updates to the rationale appendix to explain that various requirements were revised to match 16 CFR Part 1215.

With the revisions outlined above, ASTM F1967-11a is now in harmony with 16 CFR Part 1215 and also provides some flexibility in the use of testing solutions and test platforms, without affecting test results or conformance.

III. CONCLUSION AND RECOMMENDATION

Staff concludes that ASTM F1967-11a *Standard Consumer Safety Specification for Infant Bath Seats* is equivalent to 16 CFR Part 1215, because it now incorporates all the changes to the previous versions of the standards (ASTM F1967-08, 10, 11 and 11a) which are listed above.

Staff recommends that the Commission revise CPSC's bath seat standard, 16 CFR Part 1215, to replace the reference to ASTM F1967-08a with a reference to ASTM F1967-11a, with no additional modifications. The Office of the General Counsel has drafted a final rule for publication in the *Federal Register* making this change. In accordance with PL 112-28 (H.R. 2715), the rule would become effective 90 days after publication in the *Federal Register*, which is approximately 180 days after ASTM's notification to the Commission.



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THROUGH: Cheryl A. Falvey, General Counsel
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FROM: DeWane Ray, Associate Executive Director
Office of Hazard Identification and Reduction

Celestine T. Kiss, Project Manager
Division of Human Factors, Directorate for Engineering Sciences

SUBJECT: Notice of Revision to the Toddler Beds Standard

I. INTRODUCTION

The Danny Keysar Child Product Safety Notification Act P.L. 110-314 Sec. 104(b) (4)(B), as revised by P.L. 112-28 (H.R. 2715) Sec. 3, instructs the standards development organization (SDO) ASTM to notify the U.S. Consumer Product Safety Commission (CPSC; the Commission) of revisions to voluntary standards that are a basis for a consumer product safety standard promulgated by the Commission as outlined below:

“(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD - If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.”

ASTM F1821 - 09, *Standard Consumer Safety Specification for Toddler Beds*, along with several modifications, was adopted as a mandatory consumer product safety standard in 16 CFR

part 1217 (76 Fed. Reg. 22019, April 20, 2011) and corrected¹ in May 2011 (76 Fed. Reg. 27882, May 13, 2011). ASTM officially notified the CPSC on May 16, 2012, that it has published a revised 2011b version of ASTM F1821.

CPSC must determine if the revision improves the safety of the product and whether to retain the existing consumer product safety standard or amend the existing consumer product safety standard to reference the revised version of ASTM F1821. This memorandum outlines the differences between 16 CFR part 1217 and ASTM F1821 - 11b and provides a staff recommendation to retain the existing consumer products safety standard as referenced in 16 CFR part 1217.

II. REVIEW AND COMPARISON OF STANDARDS

There have been three revisions to ASTM F1821 since the publication of ASTM F1821 - 09. The changes for each revision are discussed below.

ASTM F1821 - 11 Revision

ASTM F1821 - 11, approved in February 2011, and published in May 2011, is the first revision of the ASTM toddler beds standard following F1821 - 09, and it contains only one significant change. The mattress retention test method 7.1 was deleted because it was determined to be no longer necessary, based on other testing requirements in the standard. The mattress retention test was not included as one of the requirements in 16 CFR part 1217 for the same reason.

ASTM F1821 - 11a Revision

ASTM F1821 - 11a, approved in April 2011, and published in May 2011, is the next version of the ASTM toddler beds standard following F1821 - 11, and it contains six significant revisions. The revisions pertain to mattress retention, guardrail heights, guardrail strength performance and testing requirements, and warning labels. These revisions were made in response to the CPSC final rule being published, but they do not reflect exactly the requirements in 16 CFR part 1217.

The revisions are as follows (~~strikeouts~~ indicate words removed, underline indicates words added):

- 1) “3.1.11 removable guardrail, n—a guardrail that can be removed without the use of tools.”

This revision was made to clarify which guardrails should be tested in 6.4.2 Guardrail Strength performance section. This was not included in CPSC’s rule because staff does not agree that removable guardrails should be exempt.

¹ The last two sections and figure were left out inadvertently in the April 20, 2011, *Federal Register* notice.

2) Section 6.1 *Mattress Retention* was deleted because ASTM considered it irrelevant due to more stringent requirements added to the standard. Staff also considered this section irrelevant for the same reason, thus, it was not included in 16 CFR part 1217.

3) 6.4.1 Guardrail Height—The upper edge of the guardrail shall be at least 9 in. above the mattress support. This measurement is to be taken from the top of the mattress support in its lowest position within 6 in. of the guardrail to the highest point of the upper edge of the guardrail within 6 in. from the headboard.

Staff determined that this revision does not improve the safety of toddler beds. The CPSC's mandatory standard at 16 CFR part 1217 requires that the guardrail always be at least 5 inches above the sleeping surface to help prevent a sleeping occupant from rolling, sliding, or otherwise falling out of the long side of the bed. CPSC's standard states that if the manufacturer does not specify a maximum mattress thickness, the guardrail height must be based on a mattress thickness of 6 inches. As stated in F1821 - 11a, the guardrail height could vary, depending on the height of the mattress used. For example, under ASTM's revised language, there would only be a 3-inch high barrier if a standard 6-inch thick full-size crib mattress is used in the toddler bed. In contrast, under CPSC's standard, by measuring from above the sleeping surface, using the maximum mattress thickness specified by the manufacturer, the guardrail will consistently provide the occupant a minimum 5-inch barrier.

4) 6.4.2 Guardrail Strength—When tested in accordance with 7.9 the guardrail shall not break, detach or create a condition that would present any of the hazards described in Section 5. Removable guardrails, and guardrails that do not have any free ends, that is that they are attached to both the headboard and the footboard, are exempt from this test. For guardrails with 2 free ends, perform this test at each free end.

This guardrail strength performance requirement is similar to the requirement in 16 CFR part 1217, with the added clarification that removable guardrails are exempt from this test. Staff disagrees with this clarification. As indicated in the staff final rule briefing package (March 2011²) "Finally, staff disagrees with exempting removable guardrails from the guardrail structural integrity test. A guardrail should be attached to a toddler bed with sufficient means to provide substantial rigidity. Guardrails that would require only the consumer's strength to install would be susceptible to the foreseeable forces that a toddler could apply to the guardrail. Such a guardrail would not be sufficient to protect a child."

5) 7.9 Guardrail Strength Test—Gradually, over a period of 5 s, apply a 40 lb force to the guardrail from the inside of the toddler bed, outward and perpendicular to the plane of the rail, and hold for 10 s. The force is to be applied to the geometric center of a 3 by 6 by 1/2-in. piece of plywood with the long end parallel to the floor.

Staff concludes that this change does not improve the safety of the toddler beds. CPSC's mandatory standard at 16 CFR part 1217 requires a 50 lb force. ASTM's revision applies a 40 lb force. As discussed in the staff's final rule briefing package (March 2011) staff conducted

² <http://www.cpsc.gov/library/foia/foia11/brief/toddlerfinal.pdf>

testing on various makes and models of toddler beds and demonstrated that 50 lbf is appropriate and adequate to identify guardrails that could be susceptible to detachment.

6) 7.9.1 For guardrails with a rectangular shape, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail, which is 9 in. from the top of the rail to the top of the mattress support in its lowest position, and the short edge even with the free short edge of the rail.

Staff concludes that this change does not improve the safety of toddler beds. The CPSC's mandatory standard at 16 CFR part 1217 requires the line to be drawn at 11 inches from the mattress support to the short edge, even with the free short edge of the rail. This 11-inch requirement corresponds to 6.4.1 guardrail height requirements. ASTM's revision sets the limit at 9 inches. Staff does not believe this is sufficient to protect children from falling out.

7) 7.9.2 For contoured guardrails that are not rectangular, the plywood shall be placed with the upper long edge of the plywood even with a line drawn parallel to the rail, which is 9 in. from the top of the rail to the top of the mattress support in its lowest position, and the short edge placed so that the downward slope of the free rail edge intersects the corner of the plywood.

This provision makes the same change as explained above, but with respect to contoured guardrails. As stated above, staff concludes that this change does not improve the safety of toddler beds. The provision, 16 CFR part 1217, requires the line to be drawn at 11 inches from the mattress support to the short edge, even with the free short edge of the rail. This 11-inch requirement corresponds to 6.4.1 guardrail height requirements.

8) The warning statement in 8.4.4.2 was deleted because ASTM considered it irrelevant since it was related to the mattress retention provisions which were removed from the standard. Staff also considered this warning irrelevant for the same reason. The CPSC's mandatory standard at 16 CFR part 1217 also omitted this provision. Staff does not have objections to this change.

F1821 - 11b Revision

ASTM F1821 - 11b, approved in December 2011, and published in January 2012, is the next version of the standard following F1821 - 11a and the one submitted to the CPSC for consideration. This latest revision contains only one change:

~~8.4.3 The warnings shall include the following exactly as stated:~~
8.4.3 The warnings shall address the following:

ASTM F1821 - 11b does not bring any of the F1821 - 11a revisions into concurrence with 16 CFR part 1217. In addition, the following modifications that the Commission made in its mandatory standard at 16 CFR part 1217 are not included in ASTM F1821 - 11b:

- a. Spindle/Slat Static Load Strength performance requirements,
- b. Spindle/Slat Testing for Guardrails, Side Rails, and End Structures, and

- c. Warning labels.

III. RECOMMENDATION

Staff concludes that the revisions in ASTM F1821 - 11b do not improve the safety of toddler beds covered by 16 CFR part 1217, which references ASTM F1821 - 09. Staff recommends that the Commission retain the existing consumer product safety standard as referenced in 16 CFR part 1217.